

AUG 05 2014

JULIA C. DUBLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

6:14CV00028

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

JENNIFER W. PLUNKETT

Plaintiff,

v.

CROSSROADS OF LYNCHBURG, INC.

and

MERCEDES-BENZ USA, LLC

Defendants.

**COMPLAINT**

Now into Court, through undersigned counsel, comes Plaintiff, Jennifer Plunkett, and moves the Court for judgment against Defendants, Crossroads of Lynchburg, Inc., and Mercedes-Benz USA, LLC, on the grounds and in the amount set forth below:

1. Defendant, Crossroads of Lynchburg, Inc., (hereinafter Crossroads) is a corporation organized under the laws of the State of North Carolina, having a registered agent located at 1111 E. Main Street, Suite 2400, Richmond, Virginia, 23218. During all times relevant to this claim, it was the owner and operator of the property located at 2643 Lakeside Drive, Lynchburg, Virginia.

2. Defendant, Mercedes-Benz USA, LLC, (hereinafter MBUSA) is a limited liability company organized under the laws of the State of Delaware, having a registered agent located at 4701 Cox Road, Suite 285, Glen Allen, Virginia, 23060. During all times relevant to this claim, MBUSA contracted with Crossroads to sell Mercedes vehicles on the property located at 2643 Lakeside Drive, Lynchburg, Virginia.

{1672 / 001}

3. As the owner and operator of the property located at 2643 Lakeside Drive, Lynchburg, Virginia, Crossroads, its agents, and its employees, owed a duty to Jennifer Plunkett, as its invitee, to maintain the premises in a reasonably safe condition; to conduct reasonable inspections to determine whether any safety concerns existed; to correct any dangerous conditions; and to warn of any such dangerous conditions known to Crossroads, its agents or its employees.

4. As the entity responsible for the distribution and marketing of Mercedes-Benz in the United States, MBUSA had a duty not to mandate a retail dealership design and/or display that was inherently hazardous to Crossroads' customers and/or invitees.

5. On the 21st day of March, 2012, Jennifer Plunkett was a business invitee of Crossroads, 2643 Lakeside Drive, Lynchburg, Virginia.

6. On the 21st day of March, 2012, Jennifer Plunkett brought her company car to Crossroads for service and/or repair. As she was walking across the floor of the service area from her company car to the loaner car provided by Crossroads, she slipped on liquid and fell directly onto her right hip and right wrist, suffering severe, painful, and permanent injuries to her hip, wrist, and spine.

7. Notwithstanding said duties, Crossroads, its agents, and its employees, allowed the walkway, upon which its invitees customarily pass over, to remain in such a way as to present a hazardous condition, and Crossroads, its agents, and its employees failed to give warning or notice of the danger, although Crossroads, its agents, and its employees, actually knew, or in the exercise of reasonable care should have known, that the hazardous condition existed. As a result, Jennifer Plunkett fell on the concrete floor with great force and

violence and sustained very serious injuries. Crossroads was negligent in that:

- a) it failed to properly maintain its walkway free from a dangerous condition in this commonly traveled area;
- b) it failed to prevent an unreasonable risk of harm to its invitees and the general public;
- c) it failed to adequately warn its invitees and the general public of the dangerous condition presented by a wet, treacherous walkway, although Crossroads knew, or in the exercise of reasonable care should have known, that the dangerous condition existed;
- d) it failed to place mats on the walkway to provide a safe method of crossing the walkway;
- e) it painted the walkway in a high-gloss paint, rendering liquid on the floor exceptionally difficult for an invitee to detect;
- f) it failed to adequately warn its invitees and the general public of the dangerous condition presented by the high-gloss paint, although Crossroads knew, or in the exercise of reasonable care should have known, that the dangerous condition existed;
- g) it failed to correct the dangerous condition of the floor despite the fact that manager Joe Camarda knew that invitees had previously fallen due to the difficulty of detecting liquid on the high-gloss floor;
- h) it failed to take the appropriate efforts to protect its invitees and the general public from the dangers presented by a wet, high-gloss walkway;

- i) it was negligent in other ways that discovery will reveal.

8. On information and belief based upon the statements of manager Joe Camarda to Jennifer Plunkett, notwithstanding said duties, MBUSA, its agents, and its employees, required the walkway, upon which Crossroads' and MBUSA's invitees customarily pass over, to be designed and displayed in such a way as to present a hazardous condition, and MBUSA, its agents, and its employees failed to give warning or notice of the danger, although MBUSA, its agents, and its employees, actually knew, or in the exercise of reasonable care should have known, that the hazardous condition existed. As a result, Jennifer Plunkett fell on the concrete floor with great force and violence and sustained very serious injuries. MBUSA was negligent in that:

- a) it required the floor of dealerships selling its products, including Crossroads, to be painted in a high-gloss paint, rendering liquid on the floor exceptionally difficult for invitees to detect;
- b) it failed to prevent an unreasonable risk of harm to its invitees and the general public;
- c) it failed to adequately warn its invitees and the general public of the dangerous condition presented by the high-gloss paint, although MBUSA knew, or in the exercise of reasonable care should have known, that the dangerous condition existed;
- d) it failed to correct the dangerous condition of the floor despite the fact that MBUSA, its agents, and its employees knew or should have known that invitees had previously fallen due to the difficulty of detecting liquid on the

high-gloss floor;

- e) it failed to take the appropriate efforts to protect its invitees and the general public from the dangers presented by a wet, high-gloss walkway;
- f) it was negligent in other ways that discovery will reveal.

9. As a direct and proximate result of Crossroads' negligence, Jennifer Plunkett sustained serious and permanent bodily injuries, has been forced to incur substantial hospital and doctors' bills in an effort to be cured of said injuries, has been prevented from transacting her business, has suffered, and will continue to suffer, great physical pain, embarrassment, emotional distress, and anxiety.

10. As a direct and proximate result of MBUSA's negligence, Jennifer Plunkett sustained serious and permanent bodily injuries, has been forced to incur substantial hospital and doctors' bills in an effort to be cured of said injuries, has been prevented from transacting her business, has suffered, and will continue to suffer, great physical pain, embarrassment, emotional distress, and anxiety.

WHEREFORE, plaintiff, Jennifer Plunkett, demands judgment against Defendants, Frontier Madison Heights LLC and Frontier Development LLC, in the amount of **Four Million Dollars (\$ 4,000,000.00)** and her costs expended in this action.

Respectfully Submitted,

Jennifer W. Plunkett

By 

Of Counsel

James B. Feinman, Esq. (VSB #28125)  
Andrew D. Finnicum, Esq. (VSB# 80358)  
Law Offices of James B. Feinman  
P. O. Box 697  
Lynchburg, Virginia 24505  
(434) 846-7603 (Phone)  
(434) 846-0158 (Fax)  
jb@jfeinman.com  
andrew@jfeinman.com

{1672 / 001}

VALIDATE CASE PAPERS  
RCPT : 14000004636  
DATE : 03/12/14 TIME: 10:32  
CASE : 6500114000200-00  
ACCT : PLUNKETT, JENNIFER W  
AMT. : \$346.00

**COVER SHEET FOR FILING CIVIL ACTIONS**  
COMMONWEALTH OF VIRGINIA

Case No. ....  
(CLERK'S OFFICE USE ONLY)

Lynchburg

Circuit Court

Jennifer W. Plunkett

PLAINTIFF(S)

v./In re:

Crossroads of Lynchburg, Inc.

DEFENDANT(S)

Mercedes-Benz USA, LLC

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

**GENERAL CIVIL**

**Subsequent Actions**

- ☐ Claim Impleading Third Party Defendant
  - ☐ Monetary Damages
  - ☐ No Monetary Damages
- ☐ Counterclaim
  - ☐ Monetary Damages
  - ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

**Business & Contract**

- ☐ Attachment
- ☐ Confessed Judgment
- ☐ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

**Property**

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
  - ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

**Tort**

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☐ Wrongful Death
- ☒ Other General Tort Liability

**ADMINISTRATIVE LAW**

- ☐ Appeal/Judicial Review of Decision of (select one)
  - ☐ ABC Board
  - ☐ Board of Zoning
  - ☐ Compensation Board
  - ☐ DMV License Suspension
  - ☐ Employee Grievance Decision
  - ☐ Employment Commission
  - ☐ Local Government
  - ☐ Marine Resources Commission
  - ☐ School Board
  - ☐ Voter Registration
  - ☐ Other Administrative Appeal

**DOMESTIC/FAMILY**

- ☐ Adoption
  - ☐ Adoption – Foreign
- ☐ Adult Protection
- ☐ Annulment
  - ☐ Annulment – Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect – Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
  - ☐ Complaint – Contested\*
  - ☐ Complaint – Uncontested\*
  - ☐ Counterclaim/Responsive Pleading
  - ☐ Reinstatement – Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
  - ☐ Separate Maintenance Counterclaim

**WRITS**

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

**PROBATE/WILLS AND TRUSTS**

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
  - ☐ Guardian/Conservator
  - ☐ Standby Guardian/Conservator
- ☐ Trust (select one)
  - ☐ Impress/Declare
  - ☐ Reformation
- ☐ Will (select one)
  - ☐ Construe
  - ☐ Contested

**MISCELLANEOUS**

- ☐ Appointment (select one)
  - ☐ Church Trustee
  - ☐ Conservator of Peace
  - ☐ Marriage Celebrant
- ☐ Bond Forfeiture Appeal
- ☐ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
  - ☐ Reinstatement pursuant to § 46.2-427
  - ☐ Restoration – Habitual Offender or 3<sup>rd</sup> Offense
- ☐ Expungement
- ☐ Firearms Rights – Restoration
- ☐ Forfeiture of U.S. Currency
- ☐ Freedom of Information
- ☐ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
  - ☐ Correct Erroneous State/Local
  - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights – Restoration
- ☐ Other (please specify) .....

☐ Damages in the amount of \$ 4,000,000.00 are claimed.

March 12, 2014

DATE

Andrew D. Finnicum, Esquire

PRINT NAME

1003 Church Street, Lynchburg, VA 24505

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(434) 846-7603

☐ PLAINTIFF ☐ DEFENDANT ☒ ATTORNEY FOR ☐ PLAINTIFF ☐ DEFENDANT

\*\*\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

JAMES B. FEINMAN  
ATTORNEY AT LAW

JAMES B. FEINMAN, ATTORNEY  
ANDREW D. FINNICUM, ATTORNEY

1003 CHURCH STREET, P.O. BOX 697  
TELEPHONE (434) 846-7603

LYNCHBURG, VIRGINIA 24505  
FAX (434) 846-0158

March 12, 2014

**VIA HAND DELIVERED**

Honorable Eugene C. Wingfield  
Lynchburg Circuit Court  
900 Court Street  
Lynchburg, VA 24505

Re: **Jennifer W. Plunkett v. Crossroads of Lynchburg, Inc. and Mercedes-Benz USA, LLC**

Dear Mr. Wingfield:

Enclosed please find an original and four copies of a Complaint which I ask that you accept for filing. Please certify the enclosed copies as to the date and time of filing and provide me with a copy.

We are having a private process server serve the Complaint on the two defendants. We kindly ask that you prepare a Summons to attach for service on each defendant.

Also enclosed is our firm check for \$346.00 made payable to the Clerk, Lynchburg Circuit Court as payment for your filing fee.

Thank you very much for your assistance. If you have any questions or comments, please contact me.

Sincerely,



Andrew D. Finnicum

ADF/jnk  
Encls.

FILED IN THE CLERK'S OFFICE OF THE CLERK  
COURT OF THE CITY OF LYNCHBURG

DATE 3/12/14 TIME 10:32 A M  
BY WINGFIELD, CLERK

BY JMM Dep. Clerk



**M. Scott Fell**

Please Reply: Southwest Virginia Office  
Direct Dial: (540) 776-3583  
E-mail: [scott.fell@kpmlaw.com](mailto:scott.fell@kpmlaw.com)  
Website: [www.kpmlaw.com](http://www.kpmlaw.com)  
File No.: 14643

Established  
**1990**

**Central Virginia**

901 Moorefield Park Drive  
Suite 200  
Richmond, Virginia 23236  
(804) 320-6300  
Fax (804) 320-6312

**Northern Virginia**

4031 University Drive  
Suite 300  
Fairfax, Virginia 22030  
(703) 691-3331  
Fax (703) 691-3332

**Eastern Virginia**

555 East Main Street  
Suite 1200  
Norfolk, Virginia 23510  
(757) 623-4500  
Fax (757) 623-5700

**Southwestern Virginia**

2840 Electric Road  
Suite 111  
Roanoke, Virginia 24018  
(540) 776-3583  
Fax (540) 776-1542

**KalbaughPfund  
& Messersmith**  
Attorneys at Law

July 29, 2014

Eugene C. Wingfield, Clerk  
Lynchburg Circuit Court  
Post Office Box 4  
Lynchburg, Virginia 24505

RE: Jennifer Plunkett v. Crossroads of Lynchburg and  
Mercedes-Benz USA, LLC  
Court File No.: CL14-208

Dear Mr. Wingfield:

Please find enclosed an Answer and Notice of  
Removal for filing in the above referenced matter.

If you have any questions, please do not hesitate to  
contact me.

Very truly yours,



M. Scott Fell

MSF/chc

cc: James B. Feinman, Esquire

FILED IN THE CLERK'S OFFICE OF THE CIRCUIT  
COURT OF THE CITY OF LYNCHBURG  
DATE AUG 01 2014 TIME 10:13 A.M.  
TESTE: EUGENE C. WINGFIELD, CLERK

BY: JMM Dep. Clerk

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG**

**JENNIFER PLUNKETT,**

**Plaintiff,**

**v.**

**Case No.: CL14-938**

**CROSSROADS OF LYNCHBURG, INC.**

**and**

**MERCEDES-BENZ USA, LLC,**

**Defendant.**

**ANSWER**

COMES NOW the Defendant, Crossroads of Lynchburg (hereinafter “this Defendant”), by counsel, and in response to Plaintiff’s Complaint previously filed herein states as follows:

1. This Defendant admits the allegations contained in Paragraph 1 of the Complaint.
2. Upon information and belief, this Defendant admits the allegations contained in Paragraph 2 of the Complaint.
3. The allegations contained in Paragraph 3 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 3 are denied by this Defendant.
4. The allegations contained in Paragraph 4 do not appear to be directed to this Defendant. To the extent the allegations contained in Paragraph 4 are directed to this Defendant, they are denied.
5. The allegations contained in Paragraph 5 of the Complaint constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations of Paragraph 5 are denied by this Defendant and this Defendant calls for strict proof thereof.

6. As to allegation contained in Paragraph 6 of the Complaint, this Defendant denies that the Plaintiff was injured on or about March 21, 2012, as described in the Complaint, or otherwise, and calls strict proof thereof.
7. The allegations contained in Paragraph 7 of the Complaint are denied.
8. The allegations contained in Paragraph 8 of the Complaint are denied, as they may pertain to this defendant.
9. The allegations contained in Paragraph 9 of the Complaint are denied and this Defendant calls for strict proof thereof.
10. The allegations contained in Paragraph 10 are not directed at this Defendant. To the extent the allegations contained in Paragraph 10 are directed at this Defendant, they are denied.
11. This Defendant denies that it is indebted to the Plaintiff in the amount of four million dollars (\$4,000,000.00) as set forth in her ad damnum, or in any other amount, and call for strict proof thereof.
12. To the extent these defenses are supported by the evidence as obtained through discovery, investigation, or otherwise, this Defendant will rely upon the defenses of contributory negligence, assumption of the risk, open and obvious condition, lack of notice, no reasonable time to cure any alleged defect, and failure to mitigate damages. Furthermore, this Defendant may contend, if the facts should support such a contention, that the Plaintiff's damages, if any, are the result of negligence caused by individuals not under the control of these Defendant.
13. To the extent that any allegation is not specifically admitted herein, they are denied.

14. This Defendant reserve the right to assert additional defenses to this cause, affirmative or otherwise, if it is later determined that such defenses are available to them.

WHEREFORE, the Defendant, Crossroads of Lynchburg, prays that this Court dismiss the Complaint filed herein by the Plaintiff Jennifer Plunkett and enter judgment in favor of this Defendant, allowing them attorney's fees and costs in this behalf expended.

**CROSSROADS OF LYNCHBURG**

By:   
Counsel

M. Scott Fell (VSB # 30443)  
M. Quentin Emick, Jr. (VSB # 44027)  
Kalbaugh, Pfund & Messersmith, PC  
2840 Electric Road, Suite 111  
Roanoke, Virginia 24018  
Phone: (540) 776-3583  
Fax: (540) 776-1542

**CERTIFICATE**

I hereby certify that a true and accurate copy of the foregoing Answer was mailed first class, postage pre-paid, on this 29 day of July, 2014 to counsel for Plaintiff, James B. Feinman, Esquire, James B. Feinman & Associates, Post Office Box 697, Lynchburg, Virginia 24505.

  
M. Scott Fell, Esquire

FILED IN THE CLERK'S OFFICE OF THE CIRCUIT  
COURT, JAMES B. FEINMAN & ASSOCIATES  
AUG 01 2014 10:13 AM  
CLERK

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG**

**JENNIFER PLUNKETT,**

**Plaintiff,**

**v.**

**Case No.: CL14-938**

**CROSSROADS OF LYNCHBURG, INC.**

**and**

**MERCEDES-BENZ USA, LLC,**

**Defendants.**

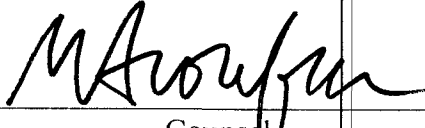
**NOTICE OF FILING OF REMOVAL TO DISTRICT COURT**

Pursuant to 28 U.S.C.A. §§1332(a)&(c), 1441 and 1446, please take notice that on the 29<sup>th</sup> day of July, 2014, CROSSROADS OF LYNCHBURG, Defendant in the above-entitled action, filed its Notice of Removal of the above entitled action to the United States District Court for the Western District of Virginia, Lynchburg Division, a copy of which is attached hereto.

You are hereby advised that Defendant Crossroads of Lynchburg, upon filing such Notice of Removal in the Office of the Clerk of the United States District Court for the Western District of Virginia Lynchburg Division, also caused to be filed copies hereof with the Clerk of the Circuit Court of the City of Lynchburg, to effect removal of the subject action pursuant to 28 U.S.C.A. §§1332(a) & (c), 1441 and 1446.

DATED this 29<sup>th</sup> day of July, 2014.

**CROSSROADS OF LYNCHBURG**

By:   
Counsel

M. Scott Fell (VSB # 30443)  
M. Quentin Emick, Jr. (VSB # 44027)  
Kalbaugh, Pfund & Messersmith, PC  
2840 Electric Road, Suite 111  
Roanoke, Virginia 24018  
Phone: (540) 776-3583  
Fax: (540) 776-1542

**CERTIFICATE**

I hereby certify that a true and accurate copy of the foregoing Notice of Removal was mailed first class, postage pre-paid, on this 29 day of July, 2014 to counsel for Plaintiff, James B. Feinman, Esquire, James B. Feinman & Associates, Post Office Box 697, Lynchburg, Virginia 24505.

  
M. Scott Fell, Esquire

AUG 01 2014

10:13 AM

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT  
AT LYNCHBURG, VA  
FILED

JUL 30 2014

JULIA C. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

JENNIFER PLUNKETT,

Plaintiff,

v.

CROSSROADS OF LYNCHBURG,  
INC., ET AL.,

Defendants.

Case No. 6:14CV00028  
State Court No. CL14-938

**ORDER**

This case having been removed from your Court to the United States District Court for the Western District of Virginia at Lynchburg, and this Court finding it necessary to do so, it is this day

**REQUESTED**

that the original case file in your Court be forwarded to the Clerk of this Court at 1101 Court Street, Room A66, Lynchburg, VA 24504, said removal and transmittal of the file being in accordance with the law for these cases made and provided.

The Clerk is directed to send a certified copy of this Order to the Clerk of the Lynchburg Circuit Court, P. O. Box 4, Lynchburg, VA 24505 .

ENTER: *July 30, 2014*

*[Signature]*  
UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTED  
JULIA C. DUDLEY, CLERK

BY: *[Signature]*

FILED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

DATE AUG 01 2014 TIME 10:13 A M

TESTED BY: ELIZABETH C. WINGFIELD, CLERK

Office of the Clerk  
Lynchburg Circuit Court  
P. O. Box 4  
Lynchburg, VA 24505

FILED IN THE CLERK'S OFFICE OF THE JUDICIAL  
COURT OF THE CITY OF LYNCHBURG

DATE AUG 01 2014 TIME 10:13 A M  
TESTED BY JMM CLERK